

I

98TH CONGRESS
1ST SESSION

H. R. 2133

To amend the Small Business Act.

IN THE HOUSE OF REPRESENTATIVES

MARCH 16, 1983

Mr. MITCHELL (for himself and Mr. ADDABBO) introduced the following bill;
which was referred to the Committee on Small Business

A BILL

To amend the Small Business Act.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 8(b)(7) of the Small Business Act is amended by
4 adding the following new subparagraphs:

5 “(D) The Administration shall not—

6 “(i) refuse to accept and consider a referral from a
7 Government procurement officer which is made pursu-
8 ant to subparagraph (A) or (B); or

9 “(ii) limit the availability of any certification,
10 which may be issued pursuant to this paragraph, on
11 account of the anticipated dollar value of the contract,
12 the nature of the work to be performed, or on account

1 of any other factor which is unrelated to responsibility
2 issues as defined by subparagraph (A), or eligibility
3 issues as defined by subparagraph (B): *Provided, That,*
4 nothing contained in this clause shall require the ad-
5 ministration to process an application for certification if
6 the small business, to which the referral pertains, de-
7 clines to have its application processed.

8 “(E) No small business concern shall be denied the op-
9 portunity to submit and have considered its offer for any con-
10 tract to be let by any Federal agency solely because such
11 concern—

12 “(i) is not on a ‘qualified bidders list’;

13 “(ii) does not have its product or products on a
14 ‘qualified products list’; or

15 “(iii) has not received prior approval from a Fed-
16 eral agency to submit and have considered its offers re-
17 lating to a certain nature of work or class of contracts
18 if such prior approval is based upon a responsibility de-
19 termination which would have been subject to subpara-
20 graph (A) were a specific contract under consideration
21 and the matter referred to the administration.”.

22 SEC. 2. Section 8(d)(2)(A) of the Small Business Act is
23 amended by striking out “\$10,000” and by inserting in lieu
24 thereof “\$25,000”.

1 SEC. 3. Section 8(d)(11) of the Small Business Act is
2 amended by adding to the end thereof the following:

3 “Each subcontracting plan contained in such report shall be
4 identified by the relevant contract number, the name of the
5 Federal buying activity, the name of the contractor, and the
6 name of the Federal procurement contracting officer who ac-
7 cepted the plan.”.

8 SEC. 4. Section 15 of the Small Business Act is
9 amended—

10 (a) by striking the last sentence of subsection (a)
11 and by inserting in lieu thereof the following:

12 “A procurement requirement, or any part thereof, shall
13 be set aside for exclusive competition among small business
14 concerns if the Government procurement officer has a rea-
15 sonable expectation that (A) offers will be obtained from at
16 least two responsible small business concerns offering the
17 products of different small business concerns and (B) awards
18 will be made at reasonable prices. Whenever the administra-
19 tion and the Government procurement officer fail to agree on
20 any determination made pursuant to this subsection or sub-
21 sections (b), (d), (e), (f) or (j), the matter shall be submitted for
22 a final determination to the Secretary or the head of the ap-
23 propriate department or agency by the Administrator.”.

24 (b) by amending subsection (b) to read as follows:

1 “(b)(1) Federal agencies shall, when feasible, reduce the
2 number of anticipated requirements to be contained in each of
3 its contract solicitations by an amount necessary to promote
4 the maximum practicable opportunity for small business con-
5 cerns to submit offers in response to such solicitations.

6 “(2) With respect to any work to be performed the
7 amount of which would exceed the maximum amount of any
8 contract for which a surety may be guaranteed against loss
9 under section 411 of the Small Business Investment Act of
10 1958 (15 U.S.C. sec. 694(b)), the contracting procurement
11 agency shall, to the extent practicable, place contracts so as
12 to allow more than one small business concern to preform
13 such work.

14 “(3) No Federal agency shall solicit an offer from only
15 one source or negotiate with only one source (other than pur-
16 suant to section 8(a) of this Act) for the purchase of spare or
17 replacement parts unless the head of the buying activity cer-
18 tifies, for each such procurement, that—

19 “(A) the parts are available from only one source
20 and no other business concern is capable of producing
21 the same or like parts which are consistent with the
22 legitimate needs of the agency;

23 “(B) the agency’s need for the parts is of such
24 urgency that the mission of the agency would be seri-

1 ously injured if it did not solicit or negotiate with only
2 one source;

3 “(C) the disclosure of the agency’s needs to more
4 than one source would compromise the national secu-
5 rity;

6 “(D) a party has a legitimate proprietary interest
7 in the parts or their manufacture and the agency would
8 be legally liable to such party if it purchased the same
9 or like parts from another party; or

10 “(E) a statute requires that the parts be procured
11 through another agency or a specific source.

12 “(4)(A) Except as provided in subparagraph (B), when a
13 Federal agency makes an affirmative decision for a conver-
14 sion to contract of commercial activities which are not being
15 presently performed by a private commercial source, such ac-
16 tivities shall be—

17 “(i) set aside for exclusive competition among
18 small business concerns pursuant to subsection (a); or

19 “(ii) awarded pursuant to section 8(a) of this Act.

20 “(B) Individual commercial activities which the Govern-
21 ment procurement officer reasonably determines do not satis-
22 fy the requirements of subsection (a) or are unsuitable for
23 award pursuant to section 8(a) of this Act, may be awarded
24 without regard to subparagraph (A): *Provided*, That nothing
25 contained herein shall limit the rights of the Administrator to

1 appeal such determinations pursuant to subsection (a) or sec-
2 tion 8(a) of this Act: *And Provided further*, That contracts
3 for commercial activities having an anticipated value of less
4 than \$2,000,001 shall be subject to the requirements of sub-
5 section (j).

6 “(C) As used in this paragraph the terms ‘conversion to
7 contract’, ‘commercial activities’, and ‘a private commercial
8 source’ shall have the same meaning as given those terms by
9 Office of Management and the Budget Circular A-76 or any
10 successor circular.”.

11 (c) by amending subsections (d), (e), and (f) to read
12 as follows:

13 “(d) For purposes of this section priority shall be given
14 to the awarding of contracts and the placement of subcon-
15 tracts to small business concerns which shall perform a sub-
16 stantial proportion of the production on those contracts and
17 subcontracts within areas of concentrated unemployment or
18 underemployment or within labor surplus areas. Notwith-
19 standing any other provision of law, total labor surplus area
20 set-asides pursuant to Defense Manpower Policy Number 4B
21 (32A CFR chapter 1) or any successor policy shall be author-
22 ized if the Government procurement officer has a reasonable
23 expectation that (1) offers will be obtained from at least two
24 responsible business concerns and (2) awards will be made at
25 reasonable prices. As soon as practicable and to the extent

1 possible, in determining labor surplus areas, consideration
2 shall be given to those persons who would be available for
3 employment were suitable employment available. Until such
4 definition reflects such number, the present criteria of such
5 policy shall govern. No award of any contract referred to in
6 this subsection shall be construed as being made for the pur-
7 pose of relieving economic dislocations.

8 “(e) In carrying out small business set-aside programs,
9 Federal agencies shall award contracts and encourage the
10 placement of subcontracts for procurement to the following in
11 the manner and in the order stated:

12 “(1) concerns which are small business concerns
13 and which are located in labor surplus areas, on the
14 basis of a total small business-labor surplus area set-
15 aside;

16 “(2) concerns which are small business concerns,
17 on the basis of a total small business set-aside;

18 “(3) concerns which are small business concerns
19 and which are located in a labor surplus area, on the
20 basis of a partial small business-labor surplus area set-
21 aside; and

22 “(4) concerns which are small business concerns,
23 on the basis of a partial small business set-aside.

24 “(f) After priority is given to the small business concerns
25 specified in subsection (e), priority also shall be given to the

1 awarding of contracts and the placement of subcontracts, on
2 the basis of a total labor surplus area set-aside, to business
3 concerns which will perform a substantial proportion of the
4 production on these contracts and subcontracts within areas
5 of concentrated unemployment or underemployment or within
6 labor surplus areas.”.

7 (d) by amending subsection (g) to read as follows:

8 “(g)(1) The head of each Federal agency shall, after
9 consultation with the administration, establish goals each
10 year for the award of its procurement contracts and subcon-
11 tracts to small business concerns, small business concerns
12 owned and controlled by socially and economically disadvan-
13 taged individuals and business concerns which perform a sub-
14 stantial proportion of their production within areas of concen-
15 trated unemployment or underemployment or within labor
16 surplus areas.

17 “(2) Goals established under this subsection shall be
18 jointly established by the administration and the head of each
19 Federal agency and shall realistically reflect the maximum
20 potential of those firms described in paragraph (1) to perform
21 such contracts and to perform subcontracts under such con-
22 tracts. Whenever the administration and the head of any
23 Federal agency fail to agree on established goals, the dis-
24 agreement shall be submitted to the Administrator of the

1 Office of Federal Procurement Policy (or the head of any
2 successor agency) for final determination.

3 “(3) Goals established pursuant to this subsection shall
4 be separately established for both prime contracts and sub-
5 contracts of each Federal agency. Subject to the require-
6 ments of paragraphs (4) and (5), such goals shall be expressed
7 as a per centum of the total dollar amount of anticipated
8 prime contract and subcontract awards.

9 “(4) In no event shall a Federal agency’s goals be less
10 then the goals which that agency had during the immediately
11 preceding fiscal year: *Provided*, That the goals for an agen-
12 cy’s prime contract awards may be established without
13 regard to the first sentence of this paragraph if—

14 “(A) in the immediately preceding fiscal year,
15 such agency awarded, at least—

16 “(i) 35 per centum of the total dollar value
17 of its prime contract awards to small business
18 concerns; and

19 “(ii) 15 per centum of the total dollar value
20 of its prime contract awards to small business
21 concerns owned and controlled by socially and
22 economically disadvantaged individuals; and

23 “(B) the prime contract goal of the agency for the
24 immediate fiscal year is, at least, equal to such agen-
25 cy’s per centum of actual prime contract awards to

1 those concerns described in paragraph (1) during the
2 immediately preceding fiscal year.

3 “(5) Goals established pursuant to this subsection shall
4 be established within the first sixty calendar days of the fiscal
5 year to which they pertain. If goals are not established within
6 such time period for an individual agency, such agency shall
7 have the following goals for the immediate fiscal year—

8 “(A) for prime contract awards, the per centum
9 levels specified in paragraph (4)(A); and,

10 “(B) for subcontract awards, 125 per centum of
11 such agency’s subcontract goals for the immediately
12 preceding fiscal year.”.

13 (e) by amending subsection (j) to read as follows:

14 “(j)(1) Each contract for the procurement of goods or
15 services which has an anticipated value of \$25,000 or less
16 shall be reserved exclusively for small business concerns
17 unless the contracting officer is unable to obtain reasonable
18 offers from two or more responsible small business concerns.

19 “(2)(A) With respect to each contract for the procure-
20 ment of goods or services which has an anticipated value of
21 more than \$25,000 but less than \$2,000,001, the Govern-
22 ment contracting officer shall presume that—

23 “(i) the criteria of subsection (a) for a small busi-
24 ness set-aside have been met; or

11

1 “(ii) the subject procurement is suitable for award
2 pursuant to subsection (a) of section 8.

3 “(B) The presumption established by subparagraph (A)
4 may only be rebutted by the head of the relevant buying ac-
5 tivity in determinations and findings which contain substan-
6 tial reason to believe that the presumption is not warranted
7 with respect to the particular contract.

8 “(3) Nothing contained in this subsection shall limit the
9 rights of the Administrator to appeal any determination pur-
10 suant to subsection (a) or section 8(a) of this Act.

11 “(4) Contracting officers shall, to the maximum extent
12 practicable, choose a method of payment which minimizes
13 paperwork and facilitates prompt payment to small business
14 concerns.”.

15 SEC. 5. Section 16 of the Small Business Act is amend-
16 ed by inserting immediately after “Act,” the following: “in-
17 cluding any contract or any subcontract subject to the provi-
18 sions of this Act,”.

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